

Appellate Rules Advisory Committee Meeting

February 17, 2011

Present: Chief Justice Daniel Eismann, Judge Karen Lansing, Steve Kenyon, Lori Fleming, Molly Huskey, Christopher Pooser, Judge Earl Blower, Clive Strong, Curt Thomsen and Cathy Derden.

Rule 14 and retained jurisdiction. In July 2010 the length of time for retained jurisdiction was changed from 180 to 365 days. I.A.R. 14 provides that the length of time to file an appeal in these cases is enlarged by the time the court retains jurisdiction and the time for an appeal commences to run when the court releases jurisdiction or places the defendant on probation. The Committee was in agreement that it is undesirable for appeals involving substantive issues arising from the judgment of conviction to be delayed for up to a full year merely to accommodate the defendant's decision whether to appeal the length of his or her sentence. Both the state and the defendant have an interest in the timely resolution of issues that may affect the validity of the judgment. Delaying an appeal from the judgment until the completion of a 365-day rider will not only delay the resolution of substantive issues raised on direct appeal, it will also ultimately delay the processing of post-conviction and federal habeas proceedings, as the time for filing those actions relates directly to issuance of a remittitur in the action on direct appeal.

The Committee agreed that a challenge to the conviction should be filed within 42 days of the judgment of conviction. However, the Committee also wanted to avoid forcing defendants to immediately file an appeal from the judgment as the only way to challenge the length of their sentences, when they would not otherwise complain about the sentence if they were placed on probation after a period of retained jurisdiction. The Committee agreed the defendant should have the option of appealing the sentence imposed within 42 days after the judgment is entered or waiting until the decision is made as to whether the court will relinquish jurisdiction or place the defendant on probation. The time to file an appeal from the order relinquishing jurisdiction or placing the defendant on probation then begins to run separately from that order. This means that a second notice of appeal will have to be filed if there was a previous appeal from the judgment of conviction. It was noted that while there is no requirement that a court actually enter an order relinquishing jurisdiction an order is usually entered.

The Committee voted unanimously to recommend that Rule 14 be amended as follows:

Rule 14, Time for filing appeals. All appeals permitted or authorized by these rules, except as provided in Rule 12, shall be taken and made in the manner and within the time limits as follows:

(a) Appeals From the District Court. Any appeal as a matter of right from the district court may be made only by physically filing a notice of appeal with the clerk of the district court within 42 days from the date evidenced by the filing stamp of the clerk of the court on any judgment or order of the district court appealable as a matter of right in any civil or criminal action. The time for an appeal from any civil judgment or order in an action is terminated by the filing of a timely motion which, if granted, could affect any findings of fact, conclusions of law or any judgment in the action (except motions under Rule 60 of the Idaho Rules of Civil Procedure or motions regarding costs or attorney's fees), in which case the appeal period for all judgments or orders

commences to run upon the date of the clerk's filing stamp on the order deciding such motion. The time for an appeal from any criminal judgment, order or sentence in an action is terminated by the filing of a motion within fourteen (14) days of the entry of the judgment which, if granted, could affect the judgment, order or sentence in the action, in which case the appeal period for the judgment and sentence commences to run upon the date of the clerk's filing stamp on the order deciding such motion. ~~In a criminal case, the time to file an appeal is enlarged by the length of time the district court actually retains jurisdiction pursuant to Idaho Code. When the court releases its retained jurisdiction or places the defendant on probation, the time within which to appeal shall commence to run.~~ If, at the time of judgment, the district court retains jurisdiction pursuant to Idaho Code § 19-2601(4), the length of time to file an appeal from the sentence contained in the criminal judgment shall be enlarged by the length of time between entry of the judgment of conviction and entry of the order relinquishing jurisdiction or placing the defendant on probation; provided, however, that all other appeals challenging the judgment must be brought within 42 days of that judgment. Provided, if a criminal judgment imposes the sentence of death, the time within which to file a notice of appeal does not commence to run until the death warrant is signed and filed by the court.

The proposed amendment would also require an amendment to Rule 17 as follows:

Rule 17. Notice of appeal- contents.

(e) Designation of Appeal.

(1) A Designation of the Judgment or Order Appealed From. The notice of appeal shall designate the judgment or order appealed from which shall be deemed to include, and present on appeal:

(C) All interlocutory or final judgments and orders entered after the judgment or order appealed from except orders relinquishing jurisdiction after a period of retained jurisdiction or orders granting probation following a period of retained jurisdiction.

The Committee voted unanimously to recommend this amendment.

Rule 24. Earlier this year court reporters were asked for their suggestions as to amendments to the Rule 24 on reporter's transcripts. The rule provides that transcripts are due within a certain number of days from the date the notice of appeal is filed. While the notice of appeal should name the reporter and the transcripts requested and should be served on the reporter, this does not always happen and the suggestion was that the time not run until the reporter is actually notified of the request. To ensure reporters are aware of the request, the clerk's office is currently contacting reporters by email when a notice of appeal is filed requesting transcripts. Thus, it was suggested the time begin to run from this notification by the court.

The proposal was to amend Rule 24 (d) as follows:

(d) Time for Preparation of Transcript. The reporter of any trial or proceedings shall prepare and lodge with the district court or with the administrative agency the requested transcript(s) according to the following:

(1) If the transcript is estimated according to section ~~(b)~~ (c) of this rule to be less than 100 pages in length, the transcript shall be due within 30 days from the date the reporter is notified by the Supreme Court of the requested transcript of filing of the first notice of appeal.

(2) If the transcript is estimated according to section ~~(b)~~ (c) of this rule to be more than 100 pages in length but less than 500 pages in length, the transcript shall be due within 63 days from the date the reporter is notified by the Supreme Court of the requested transcript of filing of the first notice of appeal.

(3) If the transcript is estimated according to section ~~(b)~~ (c) of this rule to be more than 500 pages in length, and the court reporter estimates that additional time above the 63 days set out in section (d)(2) will be needed to complete the transcript, then the court reporter must file a proposed completion schedule with the Supreme Court. This motion for time to file a transcript estimated to be over 500 pages shall be filed on a form approved by the Supreme Court. The court will then determine the due date for the lodging of the transcript with the district court.

(4) In the event a court reporter fails to provide a written summary of the anticipated length of the reporter's ~~reporters~~ transcript according to part ~~(b)~~ (c) of this rule, the reporter's transcript shall be due within 30 days from the date the reporter is notified by the Supreme Court of the requested transcript of filing of the first notice of appeal.

The Committee voted unanimously to recommend this amendment.

In addition, Chief Justice Eismann and Steve Kenyon both stated they were aware of several typos that needed to be corrected in the Appellate Rules and will give those lists to Cathy Derden to include in the next order.